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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,750	02/20/2007	Matthias Plagmann	095309.57252US	3754
23911 7590 03/11/2009 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300				
EXAMINER				
LUONG, VINH				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,750

Applicant(s)

PLAGMANN ET AL.

Examiner

Vinh T. Luong

Art Unit

3656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 8-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 09 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date 12/8/08
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Individual Patent Application
6) ☒ Other: Attachment

1. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 3656.
2. The amendment filed on December 8, 2008 has been entered.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collignon et al. (EP 1 052 562 A2 cited in the specification).

Claim 8

Collignon teaches a pedal bearing block for receiving a pedal for a motor vehicle, comprising:

a basic body shell 2 including a shell reinforcing element 12, 4 (see Attachment hereinafter "Att.");

a connecting point 8 (FIGS. 1 and 2) for fastening the pedal bearing block to a front wall of the body shell 2; and

a bearing point 4 for receiving a pedal bearing 6.

Collignon teaches the invention substantially as claimed. Moreover, Collignon explicitly suggests in paragraph [0005]: "a first part of the pedal support 2 is moulded typically from plastic. *It may alternatively be a hybrid construction, for example, a combination of metal and plastic. The first part 2 includes **integral** pedal carriers 4 which have through holes 6 for carrying one or more pivot pins for mounting of one or more control pedal of the vehicle.*" (Emphasis added). As noted, the carrier 4 also has reinforcement ribs (unnumbered, see Att.),

thus, the bearing point 6 is *integrally* formed by the reinforcing element 12, 4 and the shell 2 as shown in FIGS. 1 and 2. Hence, Collignon's hybrid bearing blocks broadly includes the Applicant's claimed hybrid construction wherein the shell 2 consists of metal and the reinforcing element 12, 4 consists of plastic. In other words, Applicant's claimed hybrid construction is one embodiment of Collignon's hybrid bearing blocks.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate Collignon's body shell as a hybrid construction by selecting, e.g., the shell consisting of metal and the reinforcing element consisting of plastic, as suggested by Collignon. The modification of Collignon's bearing block by making the shell of metal and the reinforcing element of plastic would not have been uniquely challenging to a person of ordinary skill in the art because it is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement." *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) and it "does no more than yield predictable results." *KSR*, 127 S. Ct. at 1739.

Claim 9

An edge (Att.) encircles the shell 2 in some regions.

Claims 10 and 11

The reinforcing element 12, 4 has ribs 12, 4.

Claim 12

The reinforcing element 12, 4 has ribs 4 around the bearing point 4 of the pedal bearing.

Claim 13

The reinforcing element 12, 4 is secured on the shell 2.

Claims 14 and 15

The reinforcing element 12 substantially envelopes the encircling edge (Att.) of the shell.

Claims 16-20

The reinforcing element 12, 4 has receiving elements 14, 18 for receiving functional elements (article). *Ibid.* paragraph [0014].

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Stedman et al. (plastic 120 in FIGS. 2 and 3), Burgstaler (plastic block 1, 2), and Lorenz et al. (title).
6. Applicant's arguments filed December 8, 2008 have been fully considered but they are not persuasive.

Abstract

The objection to the abstract has been withdrawn in view of Applicant's remarks.

Information Disclosure Statement (IDS)

The IDS filed with the instant amendment has been considered.

35 USC 103

Applicant contended, *inter alia*, that “[t]he Applicants respectfully draw the Examiner's attention to the fact that the cited quote is taken out of context, as the reference to hybrid use of metal and plastic refers *solely* to the use of these materials in Collignon's pedal-receiving element 2.”

At the outset, as noted, Collignon is categorized as an X reference, *i.e.*, “document of particular relevance cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone” in the International Search Report cited by Applicant.

Second, contrary to Applicant's remarks, Collignon teaches the claimed metal shell which provides high strength in a small component coupled with a plastic pedal receiving section. In fact, Applicant apparently did not consider Collignon prior art *in its entirety* including disclosure that teach away from the claims. MPEP 2141.02.

In the instant case, the Examiner respectfully submits that Applicant's arguments are unsupported by substantially evidence presented in the record for the reasons, among other things, set forth below.

On the one hand, Collignon's paragraph [0005] expressly states:

“a first part of the pedal support 2 is moulded typically from plastic. It may alternatively be a hybrid construction, for example, a combination of metal and plastic. The first part 2 includes integral pedal carriers 4 which have through holes 6 for carrying one or more pivot pins for mounting of one or more control pedal of the vehicle.” (Emphasis added).

On the other hand, as evidenced from Collignon's drawings, particularly, FIGS. 1 and 3, the first part 2/carrier 4 has reinforcement ribs shown at 12 in FIGS. 2-4. In addition, as evidenced from Collignon's FIGS. 1 and 2, Collignon's bearing point 6 is *integrally* formed by the reinforcing element 12, 4, and the first part 2. Thus, when one having ordinary skill in the art follows Collignon's teaching to form Collignon's first part 2 by a combination of metal and plastic, one would have the first part 2 consisting of metal and plastic. Among Collignon's hybrid's construction of metal and plastic, one obviously can try to form Collignon's reinforcement element 12, 4 of plastic and Collignon's remaining parts, such as, the outer surface of Collignon's shell 2 of metal. Simply put, Applicant's claimed hybrid construction is one specific embodiment among different hybrid embodiments of Collignon's hybrid bearing blocks expressly taught or suggested by Collignon. See example (E) “Obvious to try” in MPEP 2143

and *Ball Aerosol and Specialty Container Inc. v. Limited Brands Inc.*, Fed. Cir., No. 2008-1333, 2/9/2009.

Applicant's contention that Collignon merely teaches the use of a resilient rubber or plastic sheet to seal off the engine compartment and lower transmitted noise levels fail to consider Collignon prior art in its entirety as set forth in MPEP 2141.02, *supra*.

Third, with respect to Applicant's arguments that Collignon teaches away from the claimed invention. The instant arguments are likewise not in accordance with law. The Court in *Tec Air Inc. v. Denso Manufacturing Michigan Inc.*, 52 USPQ2d 1294 (Fed. Cir. 1999) has long laid Applicant's arguments to rest by pointing out that "[a] reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant . . . [or] if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant." *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131(Fed. Cir. 1994). If when combined, the references "would produce a seemingly inoperative device," then they teach away from their combination. *In re Sponnoble*, 405 F.2d 578, 587, 160 USPQ 237, 244 (CCPA 1969); see also *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (finding no suggestion to modify a prior art device where the modification would render the device inoperable for its intended purpose).

In the case at hand, when one makes Collignon's body shell 2 by hybrid materials, *i.e.*, plastic and metal, by choosing the plastic for the reinforcement element and the metal for the outer surface as seen in Collignon's FIGS. 1-4, clearly Collignon's pedal block remains to be

operative for its intended purpose as a pedal block, *a fortiori*, Collignon transparently does not teach away the claimed invention pursuant to *stare decisis*.

Assuming *arguendo* that Collignon does not expressly suggest the use of hybrid construction as claimed, it is well settled that the selection of a known material based on its suitability for its intended use supported a *prima facie* obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) and MPEP 2144.07. Here, the use of materials, such as, plastic and/or metal, for construction of pedal blocks is notoriously well known as evidenced by the cited references, e.g., US Pub. No. 2004/0083847 A1 of Reese et al., US Patent No. 6,027,088 issued to Stedman et al., US Patent No. 5,685,200 issued to Baumann, and DE 43 26 183 A cited by Applicant. Thus, Applicant's claims are unpatentable as a matter of law pursuant to *KSR supra*.

In view of the foregoing, the Examiner respectfully declines Applicant's request to pass this case to issue.

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/
Primary Examiner, Art Unit 3656